

1 Joseph M. Mistretta  
2 3917 E. Marilyn Rd.  
3 Phoenix, AZ 845032  
4 (480) 626-3743

5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
8

9 Joseph M. Mistretta, )

10 Plaintiff, )

11 vs. )

12 KAHN SWICK & FOTI, LLC, )  
13 and LEWIS KAHN, )  
14 Defendants. )

**CV-12-02059-PHX-FJM**

**COMPLAINT**

**JURY TRIAL REQUESTED**

15 **Jurisdiction**

16 Plaintiff resides in the jurisdiction of The District of Arizona of The United States  
17 District Court.

18 Defendants Solicited their services in and forwarded the contract for these services to  
19 the jurisdiction of The District of Arizona. This will be outlined in the Complaint.

20 **Complaint**

21 Joseph M. Mistretta, Plaintiff, Pro Se, brings this action on his own behalf. On August  
22 3, 2011, a corporation named Dendreon, Inc., of which the Plaintiff was a shareholder,  
23 announced that their future financial and operational results would be well below what the  
24 analysts' were forecasting. This caused their share price to decline 60%, or \$22.00, to a price of  
25 \$13.50 per share. As a result of this, Plaintiff lost the sum of \$25,400.

26 On August 4, 2011, after seeing Defendants' name on a investors' website, Plaintiff  
27 contacted Defendant through an email. Defendant stated that they were in the process of  
28 drafting a class-action complaint against Dendreon. Mr. Kahn asked if I would like to be a part  
29 of the class-action.

30 Plaintiff responded that he was interested, but needed additional information. Mr. Kahn  
31 stated that he would email Plaintiff a copy of the complaint of which they were going to file  
32 against Dendreon.

33 On August 5, 2011, Mr. Kahn, through Bronwyn Gibson, emailed to Plaintiff 1) A copy  
34 of the Complaint which was to be filed against Dendreon, 2) A Retention Agreement For Legal  
35 Representation, and 3) A Certification Pursuant To Securities Laws.

36 On August 5, 2011, Plaintiff faxed to Defendants a signed copy of the 1) Certification  
37 Pursuant To Securities Laws, including the schedule of loses incurred by Plaintiff relating to the  
38 Dendreon Complaint and 2) A signed copy of the Retention Agreement For Legal  
39 Representation.

40 On August 5, 2011, Plaintiff contacted Mr. Kahn by email to verify that the Defendants  
41 received the fax. Mr. Bronwyn responded that day that they had receive the complete fax.

42 On August 10, 2011, Plaintiff sent Mr. Bronwyn an email requesting a status of the case.

43 Mr. Kahn responded to the Plaintiff's request that same day. He stated that the case  
44 would be slow moving, and the litigation would take a long time.

45 On August 18, 2011, Plaintiff sent an email to Mr. Kahn asking for information on the  
46 status of the case. Mr. Kahn responded the next day. He stated that the court had not chosen  
47 KAHN SWICK & FOTI, LLC as counsel, but the case had been assigned to another firm by the  
48 court.

49 **Demand**

50 First Claim

51 Negligence

52 Defendants did not inform Plaintiff that their firm was not assigned The Dendreon  
53 Class-action suit for one year, and this was only because the Plaintiff contacted them to check  
54 on the status. This has impacted Plaintiff's ability to pursue a claim against Dendreon.  
55 Due to the Defendants' lack of professionalism, Plaintiff requests that the court find that the  
56 Defendants are liable for negligence. Plaintiff ask for compensatory damages of twenty-five  
57 thousand four hundred dollars. Plaintiff also asks for punitive damages to be determined at trial.

58 Second Claim

59 Breach of Fiduciary Responsibility

60 Plaintiff re alleges allegations contained above as if set forth in this claim.

61 Attorneys have a fiduciary responsibility to their clients, even before, the interest of  
62 themselves. Defendants did not present themselves in this manner to the detriment of the  
63 Plaintiff. Plaintiff ask for compensatory damages of twenty-five thousand four hundred  
64 dollars. Plaintiff also asks for punitive damages to be determined by the jury.

65 Third Claim

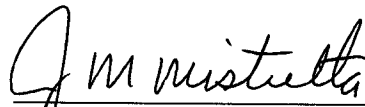
66 Breach of Contract

67 Defendants did not follow the procedures outlined in the contract which they presented  
68 to the Plaintiff. Plaintiff requests a claim for breach of contract and asked to be awarded  
69 compensatory damages of twenty-five thousand four hundred dollars.

70

71

72 Dated this 28<sup>th</sup> day of September, 2012

A handwritten signature in black ink, appearing to read "J M Mistretta", written over a horizontal line.

Joseph M. Mistretta  
3917 E. Marilyn Rd.  
Phoenix, AZ 85032  
(480) 626-3743